

# Exhibit A

UNITED STATES OF AMERICA  
FEDERAL TRADE COMMISSION  
OFFICE OF ADMINISTRATIVE LAW JUDGES

**In the Matter of**

**The Kroger Company**

**and**

**Albertsons Companies, Inc.**

**Docket No. 9428**

**EXPEDITED JOINT MOTION TO CONTINUE THE RECESS OF THE EVIDENTIARY  
PORTION OF THE PART 3 ADMINISTRATIVE HEARING**

Pursuant to 16 C.F.R. § 3.41(b), Complaint Counsel and Respondents The Kroger Company and Albertsons Companies, Inc. (“Respondents” and together with Complaint Counsel, “the Parties”) jointly move to extend the current recess in this case until 21 days after the final resolution of the related federal preliminary injunction case captioned *FTC, et al. v. Kroger Co. & The Albertsons Cos.*, No 3:24-cv-00347-AN (D. Or.). Continuing the present recess will not prejudice this Court’s ability to discharge its duties for several reasons. First, the federal court informed the Parties that it would act expeditiously to issue its ruling on the motion for preliminary injunction, and thus a continued recess would be of reasonable duration and would not unduly delay resolution of this case. Second, a continued recess would allow the Parties to react as appropriate to the federal court’s ruling, and thus facilitate significant streamlining and allow for a more orderly hearing in this proceeding, as well as minimize the expense and burden on both the Parties and non-parties.

## ARGUMENT

The Parties jointly request expedited consideration of this Motion because this Court ordered the Parties to propose a schedule for resuming the Part 3 evidentiary hearing after the conclusion of the federal hearing. *See* July 12, 2024 Order at 3. A short continuance will allow both the Parties and non-parties—who have been diligently preparing for and presenting evidence at the federal hearing and are now preparing post-hearing filings to file in that court—to prepare for the Part 3 hearing in this Court in a more orderly fashion, as well as to react as appropriate to any implications of the federal court’s forthcoming ruling that may be relevant to this proceeding.

On July 8, 2024, Respondents filed a motion to recess in this case, arguing that “[t]hree separate regulators have initiated four separate proceedings challenging the transaction” at issue in the administrative proceeding before this Court and requesting a recess under 16 C.F.R. § 3.41(b) “until the trials in the parallel actions are complete.” July 8, 2024 Respondents’ Motion to Recess the Evidentiary Portion of the Part 3 Administrative Hearing (“Respondents’ Recess Motion”) at 1-2. The Court granted the motion in part, recessing this case “until after the completion of the federal injunction hearing.” July 12, 2024 Order at 3. However, the Court denied Respondents’ request for a recess “until after the conclusion of all state injunction trials,” and thus ordered the Parties to “propose a schedule for resuming the Part 3 hearing” following “the conclusion of the [federal] hearing.” *Id.* Closing arguments in the federal injunction hearing concluded on September 17, 2024, and the Parties’ post-hearing filings—including proposed findings of fact and conclusions of law—are due on September 27, 2024.

The Parties have met and conferred since the conclusion of the federal hearing and, given this Court’s previous ruling on Respondents’ Recess Motion, now request that this Court

continue the current recess until 21 days after the final resolution of the federal proceeding. Such a continued recess is appropriate under 16 C.F.R. § 3.41(b) because it would be only a “brief interval[] of the sort normally involved in judicial proceedings”; namely, a short pause to await the federal court’s pending ruling, which may narrow—or even entirely resolve—the dispute between the Parties. Continuing the present recess would also conserve this Court’s—and the Parties’—time and resources by providing the Parties the opportunity to streamline and focus their arguments and thus avoid any inefficiencies, such as proffering testimony or evidence that may be rendered irrelevant or duplicative by the federal court’s forthcoming ruling. This outcome also would reduce the burden on non-parties who may otherwise be compelled to provide testimony in the Part 3 hearing before this Court.

### **CONCLUSION**

For the foregoing reasons, the Parties respectfully and jointly request that the Court exercise its discretion under 16 C.F.R. § 3.41(b) to continue the recess in this administrative hearing, as well as all related pre-hearing deadlines, until 21 days after the final resolution of the federal proceeding.

Dated: September 24, 2024

Respectfully submitted,

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**STATEMENT OF CONFERENCE PURSUANT TO PROVISION 4 OF THE  
SCHEDULING ORDER**

Pursuant to Provision 4 of the Scheduling Order, Complaint Counsel and Respondents submit this statement in support of their Joint Motion to Continue the Recess of the Evidentiary Portion of the Part 3 Administrative Hearing. The parties conferred in good faith and file this motion jointly.

Dated: September 24, 2024

Respectfully submitted,

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**In the Matter of**

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**Docket No. 9428**

**[PROPOSED] ORDER ON EXPEDITED JOINT MOTION TO CONTINUE THE**  
**RECESS OF THE EVIDENTIARY PORTION**  
**OF THE PART 3 ADMINISTRATIVE HEARING**

Upon consideration of the Expedited Joint Motion to Continue the Recess of the Evidentiary Portion of the Part 3 Administrative Hearing, it is hereby ORDERED that the Motion is GRANTED.

ORDERED:

\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

Date:

## CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2024, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

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I also certify that I caused the foregoing document to be served via email to:

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